

PRESENTED AT

20th Annual Land Use Conference

April 28-29, 2016
Austin, Texas

Using Public Incentives to Stimulate Private Development

Habib H. Erkan

T. Daniel Santee II

Note: This paper was converted from a scanned image.
The conversion has been reviewed for accuracy; however,
minor spelling or text-conversion errors may still be present.

**CITY OF LIVE OAK
AND
CHM LIVE OAK, LTD.**

CONFERENCE CENTER LEASE AGREEMENT

This **CONFERENCE CENTER LEASE AGREEMENT** (this "Agreement") is made and entered into by and between the **CITY OF LIVE OAK, TEXAS**, a Texas home rule municipal corporation, ("hereinafter referred to as "CITY") and **CHM LIVE OAK, LTD.**, a Texas limited partnership (hereinafter "CHM"), as of September 8, 2014, (the "Effective Date") for the purposes and considerations stated below:

WHEREAS, Chapter 351 of the Texas Tax Code addresses expenditures of the municipal hotel occupancy tax revenue; and

WHEREAS, Section 351.101(a) of the Texas Tax Code provides in pertinent part that revenue from "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following: (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both; (2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants; and (3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity"; and

WHEREAS, **CHM**, as Buyer, has entered into those certain Underlying Contracts with **STONE OAK, LTD.**, a Texas limited partnership, as Seller, and with **CHARLES C. RHETT**, as Seller, for the purchase of real property for the purpose of constructing, owning and operating a hotel and conference center, and collectively the **STONE OAK, LTD.**, and the **CHARLES C. RHETT** properties are described on **Exhibit "A"**, and the **STONE OAK, LTD.**, and the **CHARLES C. RHETT** collectively the "Underlying Contracts"); and

WHEREAS, **CHM** agrees to construct a Hilton Garden Inn and Conference Center or a Hotel and Conference Center with an alternate hotel franchisor approved by City, provide for the management of Hotel and Conference Center operations, including but not limited to personnel, and materials; and further **CHM** will conduct marketing and conduct solicitations and other promotional programs in an effort to attract tourists and convention delegates or registrants to the City of Live Oak; and

WHEREAS, the parties hereto acknowledge and agree that this Agreement is contingent upon the closing of the Underlying Contracts and should the Underlying Contracts be terminated prior to the closing thereof, this Agreement shall be null and void; and

WHEREAS, the parties hereto acknowledge and agree that the terms, conditions, representations and covenants in this Agreement are mutually beneficial for the parties hereto and serve as a material inducement for CHM to effectuate the closing of the Underlying Contracts, and

WHEREAS, the **CITY** has concluded and hereby finds that this Agreement clearly promotes tourism and the convention and hotel industry within the City of Live Oak and, further meets the requirements contained in Chapter 351 of the Texas Tax Code, as amended. **NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

This Agreement shall be effective from the Effective Date of this Agreement and, provided **CHM** is not in default with its obligations under Section 3, below, which default has continued beyond any applicable notice and cure period provided herein, shall terminate 20 years after the issuance of Certificate of Occupancy for, opening for business to the general public of, both the Hotel and Conference Center

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word “Agreement” means this Conference Center Lease Agreement, together with all exhibits and schedules attached to this Agreement, and as may be amended from time to time, if any.
- (b) **Approved by the CITY.** The phrase “approved by the **CITY**” means approved by the City Manager of the City of Live Oak, Texas, in writing, which approval shall not be unreasonably withheld, delayed, conditioned or denied unless otherwise specifically provided herein to the contrary.
- (c) **CITY.** The word “**CITY**” means the City of Live Oak, Texas City of Live Oak, Attn: City Manager, 8001 Shin Oak Drive. Live Oak, Bexar County, Texas 78233.
- (d) **City Manager.** The words City Manager mean the City Manager appointed by City Council to serve the City of Live Oak, Texas.
- (e) **Conference Center.** The words “Conference Center” mean the Hotel Conference Center more specifically described on **Exhibit “C,”** and as depicted on **Exhibit “B ”**
- (f) **Construction Loans.** The phrase Construction Loans means the dollar amount of the cost of constructing the Facility defined herein, to be funded by debt by and between CHM, as borrower, and a third party financial institution, as lender, less the amount of equity in the Real Property to be purchased pursuant to the Underlying Contracts, the CITY’S \$2,250,000.00 reimbursements to leasehold improvements and the dollar amount of Equity Funding.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Using Public Incentives to Stimulate Private Development

Also available as part of the eCourse

[2016 Land Use eConference](#)

First appeared as part of the conference materials for the
20th Annual Land Use Conference session

"Using Public Incentives to Stimulate Private Development"